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Wilkins v. National Basketball Association, 857 F. Supp. 1069 (S.D.N.Y. 1994)

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Recommended Citation

Wilkins v. National Basketball Association, 857 F. Supp. 1069 (S.D.N.Y. 1994), 11 U. Miami Ent. & Sports L. Rev. 473 (1994)
Available at: <http://repository.law.miami.edu/umeslr/vol11/iss2/12>

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tiffs' expert's study to be more credible than that performed by the defendant's expert. Affirmed.

L.H.

NATIONAL BASKETBALL ASSOCIATION V. WILLIAMS

WILKINS V. NATIONAL BASKETBALL ASSOCIATION, 857 F. Supp. 1069
(S.D.N.Y. 1994)

The National Basketball Association ("NBA") and the twenty-seven teams that compete in it ("Teams") initiated an action seeking a declaratory judgment that the NBA's use of a college draft, salary cap and right of first refusal do not violate anti-trust laws. Additionally, the NBA and the Teams wanted to continue these policies following the expiration of the collective bargaining agreement which allowed them. The class of players who were defendants in the NBA's declaratory judgment claim ("Players") counterclaimed, alleging that continuation of the policies in question would be an unreasonable restraint on trade and thus violate the Sherman Act, 15 U.S.C. §1.

The 1988 Collective Bargaining Agreement, the most recent agreement between the NBA and the Players, continued the college draft, right of first refusal and salary cap policies as set forth in earlier agreements. The 1988 Agreement formally expired on June 23, 1994, at which time the Players demanded the three disputed employment practices be eliminated. The NBA contended that antitrust law did not apply because, despite the expiration of the formal agreement, a collective bargaining relationship still existed between the NBA and the Players, and that the non-statutory labor exemption therefore applied.

Held: The court, finding no case on point, agreed with the NBA that antitrust immunity given by the nonstatutory labor exemption continued as long as a collective bargaining relationship existed between the NBA and the Players after the expiration of the formal agreement. Following the reasoning of *Bridgeman v. National Basketball Ass'n*, 675 F. Supp. 960 (D.N.J. 1987), the court refused to accept the Players' contention that antitrust immunity ends the moment a collective bargaining agreement expires. It also indicated that such antitrust immunity survives only as long as the employer continues the policies in question unchanged and reasonably believes such policies will be continued in the next collective bargaining agreement. As the three disputed practices were part of several prior agreements between the NBA and the Players, the NBA could reasonably believe they would be

continued.

Finally, noting the conflict between antitrust and labor law policies, the court found that where a collective bargaining arrangement is established and a valid agreement formed, federal labor law, not antitrust law, controls. Thus, the court granted the NBA the declaration it sought, finding that the continued implementation of these policies, despite the expiration of the formal collective bargaining agreement, does not violate antitrust laws as the Players alleged, as long as the collective bargaining relationship exists.

The court also noted that, even if the nonstatutory exemption did not apply, the Players' charge that such practices comprise a *per se* violation of the Sherman Act would be insufficient. Professional athletic associations are characterized primarily as joint ventures, and are judged under the rule of reason, an analysis of market power and structure designed to assess the actual effects of any practices in question. The Players failed to show that the alleged restraints on trade were unreasonably anti-competitive. In fact, the court pointed out that the college draft, right of first refusal and salary cap had pro-competitive effects, especially that of maintaining competitive balance throughout the NBA, that may outweigh any restrictive consequences. Thus, the Players' counterclaims were denied.

C.K.

PONCA TRIBE OF OKLAHOMA v. STATE OF OKLAHOMA, No. 92-6331,
 No. 93-2018, No. 93-2020, No. 93-3110 1994 U.S. App. Lexis
 24084 (10th Cir. Sept. 2, 1994)

This appeal raises Tenth and Eleventh Amendment questions dealing with the process Indian tribes and states utilize in setting up gaming facilities on Indian reservations. In 1988, in response to the proliferation of Indian gaming operations, Congress enacted the Indian Gaming Regulatory Act ("IGRA"). IGRA is designed to promote strong leadership and tribal economic development as a result of gaming facilities, and to provide a federal and state regulatory function to prevent the infiltration of organized crime and other corrupting influences.

IGRA classifies gaming operations into three degrees, imposing various forms of federal, state and tribal regulations over each class. Class I gaming, consisting of "social games for minimal prizes" or as part of tribal celebrations, falls under the complete regulatory control of the tribal governments. Class II gaming, con-